

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FEB 10 2009

Phil Lombardi, Clerk
U.S. DISTRICT COURTDAVID GLEN HEARD

Petitioner (name under which you were convicted)

vs.

09 CV - 065 CVE PJC

Case Number:

(Assigned by Court Clerk)

MIKE ADDISON, WARDENRespondent (authorized person having custody of
petitioner)The Attorney General of the State of: OKLAHOMA

Current Location (including Address) of Confinement:

J.H.C.C.
Box 548
LEXINGTON, OK. 73051Prisoner Number: 95909**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

TULSA COUNTY DISTRICT COURT; TULSA, OK.(b) Criminal docket or case number (if you know): CF - 2006 - 2945

2. (a) Date of the judgment of conviction (if you know): SEPT. 29, 2006

(b) Date of sentencing: SAME AS 2A

3. Length of sentence: 2 SENTENCES OF 25 YEARS, CC

4. In this case, were you convicted on more than one count or of more than one crime?

Yes No

5. Identify all crimes of which you were convicted and sentenced in this case: 2 CTS. OF

LEWD MOLESTATION

6. (a) What was your plea? (Check one)



(1) Not guilty
(2) Guilty



(3) Nolo contendere (no contest)
(4) Insanity plea

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one) N/A
 Jury Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes No

8. Did you appeal from the judgment of conviction?

Yes No

9. If you did appeal, answer the following: N/A

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes No

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? Yes No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: TULSA COUNTY DISTRICT COURT

(2) Docket or case number (if you know): CF - 2006 - 2945

(3) Date of filing (if you know): July 17, 2007

(4) Nature of the proceeding: APP. FOR POST CONVICTION RELIEF

(5) Grounds raised: DENIAL OF 14TH. AND 6TH. AMENDMENT
RIGHTS

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: DENIED

(8) Date of result (if you know): SEPT. 6, 2007

(b) If you filed any second petition, application, or motion, give the same information: N/A

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes Yes

(7) Result: _____

(8) Date of result (if you know): _____

(c) If you filed any third petition, application, or motion, give the same information: N/A

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes No
(2) Second petition: Yes No
(3) Third petition: Yes No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: *N/A*

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: MR. HEARD WAS DEPRIVED OF HIS 14TH. AMENDMENT RIGHT TO DUE PROCESS OF LAW

WHEN THE TRIAL COURT ACCEPTED HIS PLEA OF GUILTY, THROUGH THE FACTS SUPPORTING THE PLEAS DID NOT CONSTITUTE VIOLATIONS OF THE CRIMINAL STATUTE CHARGED.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PLEASE SEE ATTACHED PAGE 4A

TO BE CRIMINAL UNDER THE CHARGING STATUTE, MR. HEARD MUST HAVE LOOKED UPON THE BODY OR PRIVATE PARTS OF THE CHILDREN IN QUESTION. WHILE THE STATUTE DOES NOT SAY "NAKED BODY" OR "NAKED PRIVATE PARTS", IT IS OBVIOUS EVEN TO A LAYPERSON THAT THE PAIRING OF THE WORD "BODY" WITH THE TERM "PRIVATE PARTS" INDICATES THE LEGISLATURE INTENDED SOMETHING MORE THAN THE ACT OF LOOKING UNDER THE SKIRT OF SOME ONE WHO IS WEARING UNDERWARE, EVEN UNDER THE CIRCUMSTANCES SET FORTH IN THIS CASE. CERTIAN PARTS OF THE BODY ARE, OBVIOUSLY, REFERED TO AS "PRIVATE PARTS" BECAUSE THE GENERAL PUBLIC TENDS TO KEEP THEM HIDDEN FROM PUBLIC VIEW. AT THE TIME OF HIS ARREST, MR. HEARD ADMITTED TO LOOKING AT THE UNDER GARMENTS OF THE 2 GIRLS. AT NO TIME DID HE EVER ATTEMPT, OR SUBSEQUENTLY ADMIT TO LOOK UPON THE BODY OR PRIVATE PARTS OF THE GIRLS EXCEPT WHEN CONVINCED BY TRIAL COUNSEL TO MAKE THE ERRONEOUS PLEA. EVEN THE TRIAL COURT, WHEN ACCEPTING / DIRECTING MR. HEARD'S "PLEA," STATED THE TERMS "AT HER UNDERGARMENTS." WHILE THIS WAS AN UNACCEPTABLE ACTION BY MR. HEARD, IT IS NOT IN VIOLATION OF THE STATUTE CHARGED, WHICH SHOULD HAVE BEEN APPARENT TO BOTH THE TRIAL COURT AND TRIAL COUNSEL. AGAIN, IT IS MR. HEARD'S CONTENTION THAT TO BE CRIMINAL UNDER THE STATUTE CHARGED, A DEFENDANT MUST HAVE LOOKED UPON THE CHILD'S BODY OR PRIVATE PARTS. THE PAIRING OF THE WORD "BODY" WITH THE TERM "PRIVATE PARTS" INDICATES THE LEGISLATURE INTENDED SOMETHING MORE THAN THE ACT OF LOOKING AT THE UNDERGARMENTS OF GIRLS IN A PUBLIC LOCATION EVEN THOUGH HIS ACTION MAY OFFEND COMMON DECENCY, THE ACTIONS WERE NOT AND ARE NOT A CRIME UNDER THIS STATUTE UNDER WHICH HE WAS ENCOURAGED TO PLEA. CLEARLY MR. HEARD DID NOT POSSESS REQISITE MENS REA WHICH AND CONSTITUTES "ACTUAL INNOCENCE" OF THE CHARGED CRIME AND NOT MERELY "LEGAL INNOCENCE."

THIS FACT IS PROVEN BY NOT ONLY MR. HEARDS STATEMENTS TO OFFICERS, AND THE COURT, THAT HE WAS LOOKING AT UNDERGARMENTS; BUT ALSO, BY THE TRIAL COURT ITSELF, IN THE WORDING OF THE ERRONEOUS PLEA. THE CONCEPT OF INNOCENCE OF THE CRIME MEANS THAT THE CONSTITUTIONAL VIOLATION RESULTED IN THE CONVICTION OF ONE WHO WAS INNOCENT OF THE PARTICULAR CRIME FOR WHICH HE WAS CHARGED AND CONVICTED. HENCE, THE TRIAL COURT VIOLATED MR. HEARD'S 6TH. AMENDMENT RIGHT TO DUE PROCESS BY ACCEPTING SUCH AN ERRONEOUS PLEA.

(b) If you did not exhaust your state remedies on Ground One, explain why: N/A

(c) **Direct Appeal of Ground One:** N/A

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: APP. FOR PCR

Name and location of the court where the motion or petition was filed: TULSA COUNTY

DISTRICT COURT; TULSA

Docket or case number (if you know): CF-2006-2945

Date of the court's decision: SEPT. 6TH 2007

Result (attach a copy of the court's opinion or order, if available): DENIED

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: OCCA; OKC, OK.

Docket or case number (if you know): PC-2007-992

Date of the court's decision: JAN. 15 TH, 2009

Result (attach a copy of the court's opinion or order, if available): AFFIRM DENIAL

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: N/A

GROUND TWO: MR. HEARD WAS DEPRIVED OF HIS 6TH. AMENDENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, WHEN TRIAL COUNSEL WHOLLY FAILED TO PROPERLY RESEARCHED OR UNDERSTAND THE STATUTE PRIOR TO ADVISING A PLEA OF GUILTY.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

SEE Attached 6a

(b) If you did not exhaust your state remedies on Ground Two, explain why: N/A

(c) **Direct Appeal of Ground Two:** N/A

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: APP. FOR PCR

Name and location of the court where the motion or petition was filed: TULSA COUNTY DISTRICT COURT; TULSA

MR. HEARD WAS NOT NOTIFIED OF THE LACK OF "CRITICAL ELEMENTS" OF THE OFFENCE BY THE COURT OR TRIAL COUNSEL. SPECIFICALLY, MR. HEARD WAS NOT MADE AWARE OF THE CRITICAL ELEMENT UNTIL CONTACTED BY ATTORNEY KEVIN ADAMS; APPROXIMATELY 30 DAYS AFTER BEING ADVISED TO ENTER HIS ERRONEOUS PLEA. MR. HEARD'S FACTUAL BASIS IS VERY SIMILAR TO OTHER CASES REGARDING MEETING THE BURDEN OF DEMONSTRATING THAT THERE IS A REASONABLE PROBABILITY THAT, BUT FOR COUNSEL'S ERRORS, HE WOULD NOT HAVE PLED GUILTY AND WOULD HAVE INSISTED ON GOING TO TRIAL. MR. HEARD WAS, AT THE TIME OF HIS ERRONEOUS PLEA, UNAWARE OF AND DID NOT LEARN OF HIS COUNSEL'S ERRONEOUS ADVICE REGARDING THIS STATUTE UNTIL LONG AFTER HIS 10-DAY LIMIT WITHIN WHICH HE COULD WITHDRAW SAID PLEA. THIS IS CAUSE AND PREJUDICE AS WELL AS INEFFECTIVE ASSISTANCE OF COUNSEL, TO EVADE ANY STATE PROCEDURAL BAR. EVEN PCR COUNSEL, STEPHEN GREUBEL, STATED TO MR. HEARD IN AN AFFIDAVIT DATED JULY 11, 2007, THAT TRIAL COUNSEL DID INDEED HAVE ACCESS TO THIS INFORMATION BUT NEVER PURSUED IT. ADDITIONALLY, IN A LETTER DATED JUNE 4, 2007, ATTORNEY GREUBEL ACKNOWLEDGED THAT HIS CO-WORKERS REPRESENTATION OF MR. HEARD DID CONSTITUTE INEFFECTIVE ASSISTANCE OF COUNSEL PROMPTING THE [PUBLIC DEFENDERS OFFICE] TO PRODUCE AN APPLICATION FOR PCR FOR MR. HEARD.

Docket or case number (if you know): CF-2006-2945
Date of the court's decision: SEPT. 6TH. 2007
Result (attach a copy of the court's opinion or order, if available): DENIED

(3) Did you receive a hearing on your motion or petition? Yes No
(4) Did you appeal from the denial of your motion or petition? Yes No
(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: OCCA; OKLAHOMA

Docket or case number (if you know): PC-2007-992
Date of the court's decision: JAN. 15, 2009
Result (attach a copy of the court's opinion or order, if available): AFFIRM DENIAL

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A

GROUND THREE:

N/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

N/A

(b) If you did not exhaust your state remedies on Ground Three, explain why: _____

✓/A

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

✓/A

(d) **Post-Conviction Proceedings:** *✓/A*

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition? Yes No

(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

✓ / A

GROUND FOUR: W/A

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

W / A

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

✓/A

(c) **Direct Appeal of Ground Four:** *N/A*

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings: A

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition? Yes No
(4) Did you appeal from the denial of your motion or petition? Yes No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

W/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: *NO*

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or or federal, for the judgment you are challenging? Yes No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: TANYA WILSON

(b) At arraignment and plea: TANYA WILSON

(c) At trial: N/A

(d) At sentencing: N/A

(e) On appeal: *N/A*

(f) In any post-conviction proceeding: ✓A

(g) On appeal from any ruling against you in a post-conviction proceeding: *N/A*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: THAT THIS CAUSE BE REMANDED
TO THE TRIAL COURT WITH INSTRUCTIONS TO WITHDRAW PLEA

or any other relief to which petitioner may be entitled.

NIA

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on JAN. 27, 09 (date).

David Heard

Signature of Petitioner